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2 "On information and belief,  
3 however, certain of the photographs the  
4 defendants purport to license to third parties  
5 are in the public domain and can freely be used  
6 by such licensees without defendants' consent."

7 What photographs are you talking  
8 about?

9 MR. MINCH: Objection.

10 Q. That are owned by my clients.

11 A. The photographs that were published  
12 without notice.

13 Q. What are they?

14 MR. MINCH: Objection.

15 A. The same photographs that we keep  
16 talking about.

17 Q. The ones that you can't identify?

18 MS. COLBATH: Objection.

19 MR. MINCH: Objection.

20 A. That I can't identify at this  
21 moment.

22 Q. If we read on, "Defendants have  
23 refused to recognize that certain photographs  
24 of Marilyn Monroe allegedly owned and  
25 controlled by defendants are in the public

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domain and defendants have asserted that plaintiffs are prohibited from using such photographs without defendants' consent." Do you see that?

A. Yes.

Q. So we're clear, "defendants" is referred to as my clients here; is that right?

A. That's correct.

Q. Because this is the Indiana action where we were the defendants?

A. That's correct.

MS. COLBATH: Objection.

MR. MINCH: Objection.

Q. What is the basis for that statement?

MS. COLBATH: Are you asking what is the basis? Caption of Southern District.

MR. MINCH: This isn't Indiana. I think that's a mischaracterization.

Q. You know what I meant, don't you?

MR. MINCH: How do you know?

MR. SERBAGI: I'm talking to --

Q. You know what I meant, don't you,

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2 when I said this is derived from the Indiana  
3 action?

4 A. Okay. Why don't you redo your  
5 question.

6 Q. Well, I think we have it on the  
7 record. All I'm really getting at here is  
8 defendants -- the word "defendants" in this  
9 paragraph refers to my clients; is that right?

10 A. That's correct.

11 Q. Now, again, what I want to know is  
12 the basis for the following statement:  
13 "Defendants have refused to recognize that  
14 certain photographs of Marilyn Monroe allegedly  
15 owned and controlled by the defendants are in  
16 the public domain, and defendants have asserted  
17 that plaintiffs are prohibited from using such  
18 photographs without defendants' consent." What  
19 is the basis for that statement?

20 MR. MINCH: Objection.

21 MS. COLBATH: Objection.

22 A. The basis is the activities of the  
23 licensing representative for the Shaw Family  
24 that asserts that they have the right to give  
25 out licenses independent of any rights to the

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2 Marilyn Monroe LLC.

3 Q. When you say the activities of the  
4 licensing representatives for the Shaw Family,  
5 when you refer to licensing representative, I  
6 assume you're referring to Bradford; is that  
7 correct?

8 A. That's correct.

9 Q. And when you say the basis is the  
10 activities of Bradford, what do you mean? What  
11 activities are you referring to?

12 A. Their representations to other  
13 parties.

14 Q. Who made the representations at  
15 Bradford?

16 MR. MINCH: Objection.

17 A. Various promotions. Just their  
18 daily activities of holding themselves out as  
19 possessing these rights to -- to be able to  
20 license out Marilyn Monroe, completely  
21 independent of Marilyn Monroe LLC.

22 Q. Who made the representations you're  
23 referring to?

24 A. All I can say is the company of  
25 Bradford. I mean, whether it's their presence

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2 at a trade show or their various promotional  
3 pieces or communications with licensees. All  
4 of that, collectively, would be their  
5 representations.

6 Q. I guess I'm trying to get -- maybe  
7 this is something that you can't recall,  
8 either, but I'm trying to get to the  
9 particulars of the representations that were  
10 made. Can you tell me what exactly the  
11 representation is? When it was made?

12 A. I can't --

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 A. I can't give you those specifics.

16 Q. So the record is clear, when you  
17 say, in the -- when CMG says, in the Second  
18 Amended Complaint, "Defendants have refused to  
19 recognize that certain photographs of Marilyn  
20 Monroe allegedly owned and controlled by  
21 defendants are in the public domain and  
22 defendants have asserted that plaintiffs are  
23 prohibited from using any such photographs  
24 without defendants' consent," you can't give me  
25 any particulars about the basis for that

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2 statement; is that right?

3 MR. MINCH: Objection.

4 MS. COLBATH: Objection.

5 A. Beyond what I gave you, that's  
6 correct.

7 Q. You can't identify the particular  
8 photographs that my clients have refused to  
9 recognize -- rephrase. You can't identify the  
10 particular photographs of Marilyn Monroe that  
11 my clients have refused to recognize are owned  
12 and controlled by defendants; correct?

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 A. Not at this moment in this  
16 deposition.

17 Q. Let's go on. The rest of paragraph  
18 4 says, "But for defendants' false claims of  
19 ownership of copyrights in and to photographs  
20 of Marilyn Monroe that have, on information and  
21 belief, entered the public domain, plaintiffs  
22 would seek to utilize such public domain  
23 photographs commercially in connection with  
24 goods and services that are officially  
25 authorized and/or licensed by plaintiffs."

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2 What is the basis for that  
3 statement?

4 MR. MINCH: Objection.

5 A. I believe what that would mean is,  
6 except for the claim of the defendants in this  
7 case, that they have valid copyrights. If they  
8 acknowledged they were in the public domain, we  
9 would encourage licensees to use those photos.

10 Q. Let's get into the details of that.  
11 You say, "but for defendants' false claim of  
12 ownership of copyrights in and to photographs  
13 of Marilyn Monroe." Start with that. What are  
14 the false claims of ownership of copyrights in  
15 and to photographs of Marilyn Monroe that  
16 you're referring to? When I say "you," I mean  
17 CMG.

18 A. The licensing activities of the  
19 Shaw Family and the licensing representative.

20 Q. What particular copyrights are you  
21 referring to in this sentence that I just read  
22 that you say we falsely claim ownership to?

23 A. The various photographs that have  
24 been previously published.

25 Q. Can you name, sitting here today,

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2 the title of one copyright registration that we  
3 have falsely claimed ownership rights to?

4 MS. COLBATH: Objection.

5 MR. MINCH: Objection.

6 A. Not sitting here today.

7 Q. And would the same answer apply to  
8 the rest of the sentence, that sitting here  
9 today, you can't provide me any information  
10 regarding the part of the sentence that reads,  
11 "Plaintiffs would seek to utilize such public  
12 domain photographs commercially in connection  
13 with goods and services that are officially  
14 authorized or licensed by plaintiffs"?

15 MR. MINCH: Objection.

16 MS. COLBATH: Objection.

17 Q. Let me strike the question and  
18 reask it. With respect to that portion I just  
19 read into the record, what photographs of  
20 Marilyn Monroe would CMG and MMLLC seek to  
21 utilize that they haven't utilized because the  
22 Shaw Family has asserted rights to them?

23 MR. MINCH: Objection.

24 Q. Sitting here today, can you name  
25 one?



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2 A. Any that would be clearly  
3 recognized or acknowledged to be in the public  
4 domain.

5 Q. Sitting here today, can you  
6 identify one of those registrations or images  
7 of Marilyn Monroe?

8 MS. COLBATH: Objection.

9 MR. MINCH: Objection.

10 A. Not sitting here at this moment.

11 Q. Turning to page 6, please, under  
12 the heading "Count 1." Looking at paragraph  
13 29, would you read that into the record,  
14 please, sir.

15 A. "Defendants have refused to  
16 acknowledge that any of the works that comprise  
17 the Monroe/Shaw photographs and/or the Shaw  
18 collection have entered the public domain."

19 Q. What's the basis for that  
20 statement, sir?

21 MR. MINCH: Objection.

22 A. The basis would be that they claim  
23 valid copyright ownership to photographs that  
24 have been published without notice.

25 Q. Which photographs are you talking

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2 about? Again, you don't recall?

3 MR. MINCH: Objection.

4 A. Again, the various photographs that  
5 appear in the various publications of  
6 Photoplay.

7 Q. But just for the record, so it's  
8 clear, you can't identify them, can you?

9 A. At this moment --

10 MS. COLBATH: Objection.

11 MR. MINCH: Objection.

12 Q. At this point.

13 A. At this point in the deposition,  
14 that's correct.

15 Q. If you read paragraph 30 into the  
16 record and tell me the basis for that  
17 statement.

18 A. "On information and belief, Shaw  
19 and/or Bradford communicated to licensees,  
20 potential licensees, business partners, and/or  
21 potential business partners that such  
22 licensees, potential licensees, business  
23 partners, and/or potential business partners  
24 require the prior permission and consent from  
25 Shaw and/or Bradford prior to utilizing the

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2 public domain Monroe/Shaw photographs."

3 Q. What's the basis?

4 MR. MINCH: Objection.

5 A. Again, the licensing activities of  
6 Bradford.

7 Q. Can you give me any particulars  
8 other than just saying the licensing activities  
9 of Bradford?

10 MS. COLBATH: Objection.

11 MR. MINCH: Objection.

12 A. Just the fact they're holding  
13 themselves out to represent these photographs.

14 Q. When you say "these photographs,"  
15 can you, sitting here today, identify what you  
16 mean by "these photographs" other than what  
17 you've already stated?

18 MR. MINCH: Objection.

19 A. Not other than what I've already  
20 stated.

21 Q. You say here that Shaw, under  
22 Bradford, have communicated to CMG business  
23 partners -- let me strike that.

24 (Discussion off the record.)

25 Q. So we're clear, other than the

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2 generalized testimony you've provided already  
3 with respect to paragraph 30, you can't provide  
4 me any other basis for the statements that are  
5 contained in there?

6 MR. MINCH: Objection.

7 A. That is correct.

8 Q. Turn to paragraph 31. Please read  
9 that into the record.

10 A. "On information and belief,  
11 defendants have actively discouraged licensees,  
12 potential licensees, business partners, and/or  
13 potential business partners from entering into  
14 any relationship with plaintiffs in connection  
15 with products or services that feature certain  
16 public domain Monroe/Shaw photographs."

17 Q. What's the basis for that  
18 statement?

19 MR. MINCH: Objection.

20 A. The basis is the reality of what  
21 was happening in the marketplace in terms of  
22 Bradford discouraging in the various actions of  
23 the Shaw Family with respect to various deals  
24 that we were working on.

25 Q. Okay. Well, you say that

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2 defendants -- again, defendants here and  
3 throughout refers to my clients; is that  
4 correct?

5 A. Correct.

6 Q. "Defendants have actively  
7 discouraged licensees," and it goes on, "from  
8 entering into relationships with purchasers."  
9 Do you see that?

10 A. That's correct.

11 Q. What particular licensees did my  
12 clients actively discourage from entering into  
13 relationships with plaintiffs?

14 A. We talked earlier about Dolce &  
15 Gabbana.

16 Q. And Frieze.

17 A. Right.

18 Q. Any others?

19 MR. MINCH: Objection.

20 A. There are a number of others, yes.

21 Q. Can you name some today?

22 MR. MINCH: Objection.

23 A. I can't name any at this moment.

24 Q. It goes on, just for the sake of  
25 time, business partners, potential business

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2 partners, so on and so forth. Do you see that?

3 A. Yes.

4 (Discussion off the record.)

5 A. I'm sorry. I was distracted.

6 Q. You see the rest of 31? I had  
7 narrowed the last question to licensees.

8 A. Right. Right.

9 Q. It goes on to talk about potential  
10 licensees, business partners, potential  
11 business partners that we purportedly  
12 discourage from entering into relationships.

13 A. Right.

14 Q. Other than Frieze and Dolce &  
15 Gabbana, can you, sitting here today, identify  
16 any for us?

17 MR. MINCH: Objection.

18 A. No, I can't identify their names at  
19 this moment.

20 Q. And other than what you've  
21 testified to already, can you identify the  
22 particulars of any representations my clients  
23 have purportedly made to all the entities that  
24 are identified in 31 concerning rights to  
25 images of Marilyn Monroe?

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2 A. None other than what I've testified  
3 to.

4 Q. And if you look at paragraph 32,  
5 please. If you could read that to yourself.

6 A. Read it to myself?

7 Q. Yes. You can read 32 to yourself,  
8 please.

9 A. Okay.

10 Q. It says, "Plaintiffs have been and  
11 continue to be injured by defendants' conduct  
12 in inducing or attempting to induce plaintiffs'  
13 licensees, potential licensees" -- and it goes  
14 on. Do you see that?

15 A. I do.

16 Q. Other than what you've already  
17 testified to, do you have any more information  
18 to provide for us that would provide a basis  
19 for the allegations in paragraph 32?

20 A. Nothing other than what I've  
21 already discussed.

22 Q. How has CMG been injured by the  
23 plaintiffs' conduct?

24 A. There are many --

25 MR. MINCH: Objection.

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2 A. There are many --

3 Q. Let me rephrase it for the record.  
4 How has CMG been injured, as referred to in  
5 paragraph 32, by my clients' conduct?

6 A. There are many programs that have  
7 not happened because of the conflict with  
8 Bradford and Shaw.

9 Q. Let's talk about that. What  
10 programs are you referring to?

11 MR. MINCH: Objection.

12 A. There are many of them. I can't  
13 tell you, off the top of my head, all of them.  
14 I mean, but they're --

15 Q. Let's talk about one.

16 A. Frieze would be one.

17 Q. Other than Frieze and Dolce.

18 MR. MINCH: Objection.

19 Q. Let me rephrase the question to  
20 make it easy.

21 A. You're right on Dolce.

22 Q. Dolce went ahead.

23 A. That's correct.

24 Q. So that wasn't a relationship that  
25 was terminated; correct?



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2 A. That's correct. They'd have to  
3 be -- someone else would have to testify as to  
4 those specifics.

5 Q. What specifics?

6 A. On the specific companies that  
7 haven't entered into arrangements because of  
8 the situation with Bradford and --

9 Q. So the record is clear, sitting  
10 here today, you can't name any, can you?

11 MR. MINCH: Objection.

12 Q. Other than Frieze.

13 A. You said the record is clear I  
14 can't name any, and then you said other than  
15 Frieze. You've got Frieze. You've got --  
16 there's a party good company. I mean, no, I  
17 don't have specific names other than Frieze.

18 Q. Since you can't name the companies  
19 other than Frieze, sitting here today, you  
20 don't know whether MMLLC has any relationships  
21 with those companies, do you?

22 MR. MINCH: Objection.

23 A. You mean if they didn't proceed?

24 Q. Right. Let me rephrase the  
25 question. I want to get back to a question I

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2 asked earlier. I said, "How has CMG been  
3 injured as referenced to paragraph 32 by my  
4 clients' conduct?"

5 You answered, "There are many of  
6 them. I can't tell you, off the top of my  
7 head, all of them," and we went on from there.

8 I want to make clear for the record  
9 that, sitting here today, you can't name any  
10 particular companies that did not enter a  
11 relationship with MMLLC pertaining to the  
12 licensing of images of Marilyn Monroe because  
13 of the conduct of my clients.

14 MS. COLBATH: Objection.

15 MR. MINCH: Objection.

16 A. Well, I think that we just answered  
17 that with respect to we said other than Frieze.  
18 So --

19 Q. Other than Frieze, there are no  
20 others that you can think of, sitting here  
21 today?

22 A. That I can name, sitting here  
23 today.

24 MR. SERBAGI: We have to go off the  
25 record. The tape has run out.

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2 THE VIDEOGRAPHER: We are now off  
3 the record at approximately 4:09.

4 (A brief recess was taken.)

5 THE VIDEOGRAPHER: This is tape 4  
6 of the deposition of Mark Roesler. We  
7 are now on the record at approximately  
8 4:19 p.m.

9 Q. Turning to paragraph 31 again, Mr.  
10 Roesler, where it says that my clients "have  
11 actively discouraged licensees, potential  
12 licensees," and it goes on, "from entering into  
13 relationships with plaintiffs." Do you see  
14 that?

15 A. Yes.

16 Q. Sitting here today, you can't  
17 identify the particular photographs that we  
18 purportedly discouraged these entities from  
19 using, can you?

20 MR. MINCH: Objection.

21 A. That's correct.

22 Q. Or the particular books at issue.

23 MR. MINCH: Objection.

24 A. Or the particular -- what?

25 Q. Or the titles of the books that we

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2 purportedly discouraged those entities,  
3 licensees, potential licensees of CMG and MMLLC  
4 from using.

5 MS. COLBATH: Objection.

6 A. I'm not sure I understand your  
7 question on the books.

8 Q. I'll rephrase it. I want to read  
9 back my prior question and answer so we have a  
10 context. I asked you, "Sitting here today, you  
11 can't identify the particular photographs that  
12 we purportedly discouraged these entities from  
13 using, can you?" And you said, "That's  
14 correct."

15 I want to make it clear on the  
16 record that looking at paragraph 31, can you  
17 identify the title of any Marilyn Monroe --  
18 let me rephrase. Can you identify any specific  
19 image of Marilyn Monroe that my clients  
20 actively discouraged CMG or MMLLC's licensees  
21 from using pertaining to Marilyn Monroe?

22 MR. MINCH: Objection.

23 MS. COLBATH: Objection.

24 A. I cannot.

25 Q. Let's turn to topic 2 on Schedule A

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2 of what is identified as Roesler 1, namely the  
3 30(b)(6) notice. Do you see that, sir?

4 A. Yes, sir.

5 Q. Topic 2 states, "The factual basis  
6 for defendants' contention that Marilyn Monroe  
7 died a domiciliary of California and not New  
8 York." What is CMG's factual basis for  
9 contending -- well, let me stop. What is CMG's  
10 contention as to where Marilyn Monroe was  
11 domiciled when she died?

12 A. It was our -- it was our belief  
13 when we researched the issue that she was  
14 probably domiciled in California at the time of  
15 her death. That was our belief.

16 Q. And sitting here today, is that  
17 your belief? When I say "you," meaning CMG.

18 A. I would say that's our belief, yes.

19 Q. And what is that belief based upon?

20 A. Just the knowledge that we know in  
21 general about Marilyn Monroe and the knowledge  
22 we know about her business affairs.

23 Q. Tell me everything that you know  
24 that would provide a basis for your belief,  
25 sitting here today, that Marilyn Monroe died a